Woehrle v. *Canclini,* 158 Cal. 107. As the latest expression of the legislature, § 63 would ordinarily control if it clearly excludes tort judgments from being proved. *U. S.* v. *Jackson,* 143 Fed. 783.

BILLS AND NOTES—BONA FIDE HOLDER—INTERDEPENDENT AGREEMENTS.—Plaintiff gave his notes to a land company under a contract that in consideration of the payment of the notes, the payee should convey certain land and on the date of the last payment, plaintiff should have a warranty deed. The payee indorsed the notes to the defendant before maturity for value. Defendant also took an assignment of the land contract for security. On the maturity of the first note, plaintiff tendered payment asking for a conveyance. As the land company had become insolvent and had never owned the land, a conveyance could not be made; thereupon plaintiff deposited the money in defendant bank upon an agreement that plaintiff might withdraw it when he saw fit. When plaintiff sought to withdraw it, defendant claimed the amount of the notes. *Held,* that the plaintiff was not liable on the notes. *Todd* v. *State Bank of Edgewood,* (Ia. 1917), 165 N. W. 593.

The case seems on its face to be well within the doctrine of *McNight* v. *Parsons,* 136 Ia. 390, to the effect that knowledge by the purchaser of a negotiable instrument that it was given in consideration of an executory contract will not affect his rights as a *bona fide* holder unless he also had notice of a breach of such contract. *Russ Lumber &c. Co.* v. *Land &c. Co.,* 120 Cal. 521; *Bank of Sampson* v. *Hatcher,* 151 N. C. 359; *U. S. Nat. Bank* v. *Floss,* 38 Ore. 68. But the court in the principal case applies the rule that the purchaser who knows that the performance of an executory agreement is a condition precedent to the right of the payee to demand or recover payment is in no better position than the payee. *Thomas* v. *Page,* Fed. Cas. No. 13906; *Sutton* v. *Beckwith,* 68 Mich. 303. This modifies the *McKnight* case, *supra,* for that pays no attention to the kind of executory contract the purchaser might know of. Though the distinction between notice of an executory contract and notice of the existence of mutually dependent agreements had been pointed out, the cases ignored it. *Jennings* v. *Todd,* 118 Mo. 296; 7 HARV. L. REV. 431. Even the *Sutton* case, *supra,* the opinion of which supports the instant case, may be distinguished on the facts because the purchaser was there charged with knowledge of the actual fraud of the payee.

BROKERS—AUTHORITY IN WRITING—SUFFICIENCY IN DESCRIPTION OF LAND.—Defendant in writing authorized plaintiff to sell property describing it as "my stock ranch located in sections 9, 17, and 21, Township 3 South, Range 13 East, Sweetgrass County, Mont." Plaintiff sued for commissions earned under the contract. *Held,* contract unenforcible for want of sufficient description, the Code requiring agreements authorizing brokers to sell real estate to be in writing and signed by party to be charged therewith. *Rogers* v. *Lippy et ux.,* (Wash., 1918), 169 Pac. 858.

The majority opinion finds its support in the case of *Thompson* v. *English,* 76 Wash 23. It was suggested in the principal case that if the problem were a new one in the state, a different conclusion might be reached from that

reached in *Thompson* v. *English* and the decisions following the law there announced. In assuming that it was necessary to add something to the description contained in the contract, in order to make it complete, the case seems to proceed on a wrong conception of the question involved. Parol evidence may be resorted to for purpose of identifying the description contained in the writing with its location upon the ground, but not for the purpose of ascertaining and locating the land about which the parties negotiated and supplying a description thereof which they omitted from the writing. *Thompson* v. *English* (*supra*). In *Guyer* v. *Warren,* 175 Ill. 328, a description of the property in an option contract as our farm in Le Claires Reserve, Rock Island County, was held sufficient within the rule that "that is certain which can be made certain from the words employed." The description in *Guyer* v. *Warren* (*supra*) is no more definite on its face than the description in the principal case, the rule laid down in the one is the same in substance as the rule laid down in the other, and yet an entirely opposite conclusion was reached as to the effect of the writing. Such a difference can be explained only on the theory that the maxim "that is certain which can be made more certain" is not applicable to cases of this character. The doctrine of the principal case is followed only in Washington. The rule of *Guyer* v. *Warren* (*supra*) finds support in many states. See *Sanchez* v. *Yorba,* 8 Cal. App. 490; *Hurley* v. *Brown,* 98 *Mass.* 545; *Hodges* v. *Kowing,* 58 Conn. 12; *Mead* v. *Parker,* 115 Mass. 413; *Robeson* v. *Hornbaker,* 3 N. J. Eq. 60.

CARRIERS OF PASSENGERS—CREATION OF THE RELATION.—Plaintiff's husband being sick, she desired to go to a nearby town where she could arrange to send him to a hospital. The fast train of the defendant did not ordinarily stop. The ticket agent wired the facts to the division superintendent who gave orders for the train to stop, but it failed to do so. In an action for damages, *held,* that the relation of passenger and carrier has been created, *Fenton et ux.* v. *Chicago, M. & St. P. Ry. Co.,* (Wash. 1918), 169 Pac. 863.

Defendant claimed that it owed no public duty to stop its train and that its promise to do so was a mere gratuity which did not create the relation of passenger and carrier. The court held that on whatever terms the common carrier receives and carries a person the relation of carrier and passenger exists, citing *Walther* v. *Southern Pac. Co.* 150 Cal. 769. The essentials of the relation are an offer by the person to become a passenger and the acceptance of such person, either expressly or impliedly, as a passenger, *Illinois Cent. Ry. Co.* v. *O'Keefe,* 168 Ill. 115; *Webster* v. *Fitchburg Ry. Co.,* 161 Mass. 298; GODDARD, BAILMENTS AND CARRIERS, 145; HUTCHINSON ON CARRIERS, (3rd Ed.), 1148. A common carrier of passengers is bound to accept all persons who properly present themselves, but may accept persons as passengers when it is not bound to do so, and when it does so accept them the relation is established, *Peason* v. *Duane,* 4 Wall (U. S.) 605; *Hannibal &c Ry. Co.* v. *Swift,* 12 Wall (U. S.) 262. So where the carrier ran a stage coach to the depot, one taking passage thereon to the depot was a passenger though he had not as yet bought a ticket. *Buffett* v. *Troy & B. Ry. Co.,* 40 N. Y. 168. Passive acquiescence in allowing persons to get on at unusual